

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
October 16, 2001 Session

STATE OF TENNESSEE v. TIFFANY MICHELLE TAYLOR

Appeal from the Criminal Court for Putnam County
No. 97-0295 Leon Burns, Judge

No. M1999-02358-CCA-R3-CD - Filed April 29, 2002

The defendant, Tiffany Michelle Taylor, was convicted by a Putnam County Criminal Court jury of premeditated first degree murder and sentenced to life in the Tennessee Department of Correction. The defendant appeals, claiming that (1) the juvenile transfer statute, Tenn. Code Ann. § 37-1-134, is unconstitutional because it violates equal protection and the separation of powers doctrine; (2) her conviction violates the protection against double jeopardy; (3) the trial court erred by refusing to give a sleep defense instruction; and (4) the trial court improperly admitted inflammatory photographs into evidence. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Joseph F. Edwards (at trial and on appeal) and Michael H. Knowlton (at trial), Cookeville, Tennessee, for the appellant, Tiffany Michelle Taylor.

Paul G. Summers, Attorney General and Reporter; Elizabeth T. Ryan, Assistant Attorney General; William E. Gibson, District Attorney General; Benjamin W. Fann, Assistant District Attorney General; and Lillie Ann Sells, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This case relates to the murder of Theresa Parramoure, the defendant's mother. The defendant, who was sixteen at the time of the crime, was charged in juvenile court with murdering the victim. Pursuant to the juvenile transfer statute, Tenn. Code Ann. § 37-1-134, the state petitioned the juvenile court to transfer the defendant to criminal court in order that she be tried as an adult. During the transfer hearing, the juvenile court determined that reasonable grounds existed to believe that the defendant murdered the victim, that the defendant was not committable to an institution for the mentally retarded or mentally ill, and that the interests of the community required putting the

defendant under legal restraint. See Tenn. Code Ann. § 37-1-134(a)(4)(A)-(C). The juvenile court granted the state's petition.

At trial, Officer Rick Smith of the Putnam County Sheriff's Department testified that on November 26, 1996, he was dispatched to Cookeville General Hospital in response to a possible stabbing. He said that when he arrived at the hospital about 1:15 p.m., he saw the defendant in a wheelchair and that she was laughing with another juvenile female. He said that the defendant told him that her name was Tiffany Tinker and that her parents were in New York on vacation and would not return for a week. He said that the defendant explained that she had been using a knife to chop carrots when her pager went off in another room. He said that she told him that she ran to get the pager, tripped, and cut her leg with the knife. He said that Chris Tinker, who the defendant said was her stepbrother, was at the hospital with the defendant and confirmed the defendant's story.

Officer Smith testified that he thought the defendant's story was strange and that when he confronted Chris Tinker about it, Mr. Tinker admitted that he was not the defendant's stepbrother. He said that Mr. Tinker told him that the defendant's real name was Tiffany Taylor and that Mr. Tinker did not know where to find the defendant's parents. Officer Smith said that Mr. Tinker told him that the defendant came to Mr. Tinker's house about 9:30 a.m. and told Mr. Tinker that she got into an altercation with someone. He stated that Mr. Tinker said that he persuaded the defendant to go to the emergency room to get treatment for her leg.

Officer Smith testified that the wound to the defendant's right leg looked serious and that the defendant did not appear to be under the influence of drugs or alcohol. He said that the defendant's father and paternal grandmother came to the hospital and that the defendant left with them. He said that he asked the defendant's grandmother where the defendant's mother might be and that the defendant's grandmother told him that the defendant and the victim had been having problems recently. He said that he asked the defendant's grandmother if the defendant could have hurt the victim and that the defendant's grandmother said yes.

Detective David Andrews of the Putnam County Sheriff's Department testified that he arrived at Cookeville General Hospital about 2:00 p.m. He said the defendant told him that she had been cutting carrots for her school lunch and that when the telephone rang or a beeper went off in another room, she ran to answer it, fell, and stabbed herself in the leg. He said that the defendant was very calm and cooperative and that she told him that her parents were in New York. He said that at first, Chris Tinker told the same story as the defendant. He said that after Mr. Tinker's story changed, he confronted the defendant and asked her what really happened. He said the defendant told him the following: The victim left home that morning with a boyfriend, and the defendant drove the victim's car to school. When the defendant got to school, a man named David Elkins, who had been stalking her, approached her and intimidated her into getting into his car. Mr. Elkins drove the defendant to a dead-end road and tried to assault her sexually. As the defendant struggled with Mr. Elkins, he stabbed her in the leg. After the stabbing, Mr. Elkins drove the defendant back to school and let her go. Detective Andrews testified that the defendant told a good story and that he began investigating the defendant's case as a kidnapping and attempted rape. He said that the defendant

explained that she made up the story about accidentally stabbing herself because she was ashamed and did not want her parents to find out about the assault.

Detective Andrews testified that the next day, he was informed that a body had been found at 2524 Fisk Road. He said that when he arrived at the address about 4:00 p.m., the defendant's father was standing in the yard. He said the defendant's father told him that the defendant's mother was the victim. Detective Andrews said he learned that the defendant, her father, and her grandfather had gone to the victim's trailer to get some clothes for the defendant. He said the defendant's father went into the trailer, found the victim dead in the back bedroom, and called 9-1-1. He said the defendant was sitting in the back seat of a car and was upset. He said the defendant told him that she was afraid that the man who had assaulted her the day before had followed through with a threat to harm her family.

Detective Andrews testified that he went into the trailer's back bedroom and saw the victim. He said the victim was lying face down and that her upper body was on the bed, while her feet were resting on the floor. He said the victim had a cut on her neck, severe cuts to her right arm, and deep cuts to some of her fingers. He said the murder weapon, a filet knife, was on the bed. He said the trailer was in disarray, and blood was in the bathroom and the defendant's bedroom. He said the Tennessee Bureau of Investigation (TBI) collected evidence and removed the victim's body.

Detective Andrews testified that the defendant left the trailer with her father and grandfather but came to the Putnam County Sheriff's Office about 7:00 p.m. He said the defendant gave him and TBI Agent Larry O'Rear the following account of the crime: On the night of November 25, visitors came to the defendant's bedroom window. The defendant went to the victim's bedroom and checked to make sure the victim was asleep. The defendant went back to her bedroom, locked her bedroom door, and started to raise the window. The victim came to the defendant's door and tried to get into the defendant's bedroom. The defendant unlocked and opened the door, and the victim came in and yelled at the defendant. The victim made the defendant go into the victim's bedroom and sleep with the victim. The defendant tried to sleep, but the victim kept waking her up and yelling at her. The defendant dreamed that a man was chasing her and that she was fighting him off with a knife. The defendant woke up about 6:00 a.m. and discovered that she was stabbing her mother. The defendant did not know what to do, so she went to her bedroom to get some sleep. A friend of the victim telephoned, and the defendant told the caller that the victim was asleep. The defendant went back to bed, but the telephone rang again. The defendant told the second caller, the victim's employer, that she and the victim were sick. The defendant then took a shower and left in the victim's car.

Detective Andrews testified that the defendant told him that she and the victim disagreed about the defendant's friends and the defendant's being out late with them. He said the victim had signed warrants on October 15, 1996, charging Marty Martin, Robbie League, and Brian McMurray with contributing to the delinquency of a minor, the defendant. He said the victim also had obtained a restraining order to keep Marty Martin away from the defendant. He said the warrants were dismissed because the victim was deceased.

Dr. Charles Harlan, a forensic pathologist, testified that he performed the victim's autopsy. He said that the victim died within five to ten minutes of three stab wounds to the back of the chest. He said that the victim also had a cut to her neck and defensive wounds on her right arm. He said that cuts to the victim's fingers also could have been defensive wounds that occurred as the victim tried to grasp or hold the knife blade. He said there were eighteen knife wounds to the victim, not including the cuts to her fingers. The prosecution showed Dr. Harlan the knife that was found on the victim's bed, and he testified that the knife could have caused the victim's wounds.

Barry McMurray testified that in November 1996, he was working as a cook at the Shoney's Restaurant in Cookeville. He said that the defendant also worked at Shoney's and that he and the defendant were friends. He said Brian McMurray was his brother. He said that once or twice, the defendant came to work upset about arguing with the victim. He denied that the defendant told him that she might kill the victim, and he said that he did not hear the defendant make threats about the victim. He said that on the morning of November 26, he received a telephone call from the defendant. He said that the defendant told him that she needed help because she had cut herself and that she asked him to come to her home. He said he told the defendant that he could not come over because he was late for work. The prosecution asked Mr. McMurray to read aloud a letter that he received from the defendant while she was being held in the Putnam County Juvenile Detention Center. In the letter, the defendant wrote, "Tell everybody at work that I'm cool and I'll be back there as employee of the month before they can pick a new one"

Kristy Comeau testified that in November 1996, she was living in the Putnam County Juvenile Detention Center. She said that the defendant also was living at the center and that the defendant told her that the defendant was there for killing the victim. She said the defendant gave her the following account of the crime: The defendant and the victim had been getting into arguments about the defendant sneaking out at night, and the defendant was angry with the victim. The defendant tried to kill the victim once before with a knife as the victim slept, but the defendant could not bring herself to do it. The next night, the defendant put the knife to the victim's throat, and the victim woke up and said, "Tiffany, you're going to kill me." The defendant replied, "I know bitch, die." The defendant slashed the victim's throat and repeatedly stabbed the victim. When the victim tried to grab the telephone, the defendant stabbed at the victim's hand. After she killed the victim, the defendant lay on the victim's bed, but the smell was too bad for her to sleep. The defendant got up, took a shower, and called someone named "Marty" or "Barry." Later that day, the defendant went to the hospital to get treatment for her leg.

Ms. Comeau testified that the defendant told her that when the defendant's father found the victim's body, the defendant tried to act shocked to keep him from thinking that she had anything to do with the murder. She said that the defendant was upset about the victim's casket being closed because the defendant had wanted to see "how bad she messed [the victim] up" and that the defendant was interested in seeing herself on television. She said that the defendant never showed remorse and that the defendant said that she was "glad that the bitch was dead." She said that she was in the detention center with the defendant for about three weeks and that she never saw the defendant sleepwalk or have bad dreams. She said that she and the defendant were not roommates.

On cross-examination, Ms. Comeau acknowledged that she was “coming down off of drugs” while she was in the detention center.

Elizabeth Ann Brown testified that she and the defendant were roommates in the Juvenile Detention Center and that she was scared to share a room with the defendant. She said that the defendant told her that the victim made the defendant pay rent and buy her own food. She said that the defendant told her that the victim was mean to the defendant and that “the bitch got what she deserved.” She said that the defendant told her that the defendant was mad at the victim because the victim would not let the defendant date African-Americans. She said that the defendant told her that after the defendant started stabbing the victim, the victim raised up and said, “God, please forgive Tiffany because she don’t know what she’s doing.” She said that the defendant told her that this made the defendant mad and that the defendant just kept stabbing the victim. She said that the defendant told her that the defendant stabbed herself “so it wouldn’t look so bad on her.” On cross-examination, Ms. Brown testified that the defendant was fidgety in her sleep and flailed her arms violently. She said that in the mornings, the defendant’s bed would be moved out from the wall.

The prosecution recalled Detective Andrews and asked him to read to the jury a second letter that the defendant wrote to Barry McMurray sometime before the murder. Detective Andrews testified that the letter had been found in the defendant’s bedroom after the murder and that the defendant had not mailed the letter to Mr. McMurray. In the letter, the defendant referred to being arrested with Brian McMurray and Marty Martin and stated,

When I went home and knocked on my door, my mom was still asleep and freaked out when she saw me standing outside with three policemen. Three. Like they . . . think I’m going to stab one or something. . . . I am in so much trouble. I swear to God one of these nights I’m going to call you up and you’ll have to come over and help me bury my mom because I killed her. Now that I think about it, I wish I had really cut her up when I had the chance.

The defense called William D. Kenner, a psychiatrist who interviewed the defendant on March 24, 1997, and January 8, 1998, and testified that he found no evidence that the defendant was psychotic. However, he said that the defendant suffered from a condition known as sleep violence and that people who suffered from sleep violence were “pretty normal” but often injured themselves or their bed partners during sleep. He said that after having a sleep violence episode, a person usually experienced a period of confusion and disorientation. He said that the defendant’s statements about her dream indicated that she was having a night terror when she killed the victim. He said that night terrors were different from nightmares in that night terrors occurred during a deeper stage of sleep and were more terrifying and realistic than nightmares. He said that although Dr. Dolorosa Yap at the Moccasin Bend Mental Health Institute diagnosed the defendant with conduct disorder, he disagreed with that diagnosis. He said that in his opinion, the defendant was asleep during the crime in question and, therefore, did not intend to kill the victim. He said that part of his diagnosis

was based on the fact that night terrors appeared to run in families. He said that the defendant's mother experienced night terrors and that the defendant's father had a history of sleepwalking.

On cross-examination, Dr. Kenner testified that the defendant had an I.Q. of 122. He said that it would have been impossible for the defendant to fake her story about having the dream. However, he acknowledged that any part of the defendant's story could be a lie.

Ronnie Taylor, the defendant's father, testified that he and the victim separated when the defendant was about four years old. He said that at times, the victim would leave the defendant at his house and disappear. He said that the defendant spent a lot of time with his parents and that they played a big part in raising the defendant. He said the defendant did not have discipline problems and was never violent when she did not get her way. He said that on November 26, he got a telephone call to come to the hospital. He said the defendant spent that night with his parents. He said that he called the victim's trailer and was not surprised that the victim was not there. On cross-examination, Mr. Taylor testified that he never heard the defendant threaten the victim. He said that when he found the victim, the defendant started screaming.

The defendant testified that she was born in 1980. She said that the statement she gave to Detective Andrews and Agent O'Rear was the truth. She said that she had been to school on November 26 and that she had stayed late to make up time for some days that she had missed. She said that the victim picked her up and that they argued because the victim had had a bad day. She said that she went to bed about 10:00 p.m. and that she heard someone at her window. She said she tried to tell the person to go away. She said she finally decided that she would have to open the window and tell the person to leave. She said she went to the victim's bedroom to make sure the victim was asleep. She said she went back to her bedroom, locked the door, and was about to open the window, when the victim started banging on her door. She said she opened the door and tried to pretend that she had been asleep. She said the victim was screaming and shaking her. She said the victim made her sleep with the victim. She said that at first, she tried to sleep on the floor in the victim's bedroom but that because it was too cold, she got into bed with the victim. She said that everytime she was about to fall asleep, the victim screamed at her and pushed her. She said that she dreamed someone was chasing her and was going to kill her. She said that the victim kept a knife near the bed for protection and that to save herself, she somehow got the knife and started killing the person in her dream. She said that at some point, she saw the victim lying in front of her.

The defendant testified that the victim rolled over and did not move. The defendant said she talked to the victim and asked her if she would be alright. She said that blood was everywhere and that she knew there was nothing she could do to help the victim. She said that she did not know that she had hurt her leg and that she went to her bedroom. She said she thought that if she went to sleep, she would wake up and everything would be alright. She said that the telephone in the victim's bedroom rang and that she went to the bedroom to answer it. She said she told the caller that the victim was asleep and went back to her bedroom. She said that about ten minutes later, the telephone rang again and that she answered it and told the caller that the victim was in bed. She said she was dizzy and cold and realized that she was not going to be able to sleep.

The defendant testified that she went into the bathroom and saw that she was covered with blood. She said she took a shower and left in the victim's car. She said that before she left, she covered the victim with a blanket in order that she would not have to look at the victim. She said she went to Mai Cartwright's house for help and told Ms. Cartwright that she had been stabbed. She said she sat on the floor because she was dizzy and could not stand up. She said she and Ms. Cartwright drove to the drugstore to get supplies for her leg. She said that when they got back to the house, Ms. Cartwright and Chris Tinker, who lived with Ms. Cartwright, helped her bandage her leg. She said that a couple of hours later, Mr. Tinker drove her to the hospital.

The defendant denied telling the police that her name was Tiffany Tinker or that Chris Tinker was her stepbrother. She acknowledged making up the stories about accidentally stabbing herself and the attempted rape. She said that she waited until the next day to go back to the victim's trailer because she thought the victim was alright. She said that she did not believe that she had killed the victim. She testified that Kristy Comeau was lying and that she was not glad the victim was dead. She denied telling Elizabeth Brown that the victim raised up and spoke as the defendant was stabbing the victim.

The defendant testified that the victim had sex with men in front of her. She said that this occurred a couple of times a week until the defendant was fourteen years old. She said that she asked the victim to stop but that the victim refused. She said that the victim made her pay \$75 a month rent and that she had to buy her own food and clothes. She said that she would steal food from Shoney's and that she may have stolen the knife that was used to kill the victim from the restaurant. However, she said she did not steal the knife for the purpose of killing the victim. She said she had been caught sneaking out of the victim's trailer only once.

On cross-examination, the defendant testified that she was not upset with the victim for taking out warrants against the defendant's friends. She said she was annoyed when she had to sleep with the victim on November 26, but she denied being mad at her. She said she did not want to go to the hospital after she stabbed the victim because she was afraid of the questions people would ask her. She said she was laughing when Officer Smith arrived at the hospital because she was trying to keep her mind on something else. She said that the victim kept the knife on the right side of the bed and that the defendant was sleeping on the right side the night she killed the victim.

In rebuttal, the state called Dolorosa Yap, a psychiatrist at Moccasin Bend Mental Health Institute. Dr. Yap testified that the defendant came to Moccasin Bend to be evaluated for competency. She said that the defendant was found competent and that she diagnosed the defendant with conduct disorder, a behavioral problem. She said she based her diagnosis on the defendant's lying, skipping school, and sneaking out of the house at night. She said that after hearing Dr. Kenner's testimony, she still believed her diagnosis was correct. She said that in her opinion, Dr. Kenner's diagnosis that the defendant killed the victim during a night terror was wrong. She said that when someone had a night terror, the person did not remember anything about the dream. She said that because the defendant remembered her dream, the defendant was not having a night terror.

when she killed the victim. She said that she found nothing unusual about the defendant's sleep habits.

On cross-examination, Dr. Yap acknowledged that she did not have specialized training in sleep disorders and that she had never treated a patient for sleep violence. She acknowledged that she did not observe the defendant sleeping while the defendant was staying at Moccasin Bend.

In surrebuttal, the defense recalled Dr. Kenner. Dr. Kenner testified that the defendant was a good student, studied hard, and had friends who enjoyed being around her. He said that those were not characteristics of a person suffering from conduct disorder. He said that when he talked to Dr. Yap on the telephone, Dr. Yap had not read anything about sleep violence and did not know anything about it. He said that although it was once thought that people who experienced night terrors did not remember anything about their dreams, new information showed that some people could remember them. The jury convicted the defendant.

I. EQUAL PROTECTION AND SEPARATION OF POWERS

The defendant contends that the juvenile transfer statute, Tenn. Code Ann. § 37-1-134, is unconstitutional in that it violates her right to equal protection of the law guaranteed by the United States and Tennessee constitutions and the separation of powers doctrine. The state contends that the juvenile transfer statute is constitutional. We agree with the state.

A. Equal Protection

The defendant contends that the juvenile transfer statute violates equal protection under the United States and Tennessee constitutions because it allows juvenile courts to treat similarly situated juveniles, who commit the same offenses, differently. The statute states, in pertinent part:

(a) After a petition has been filed alleging delinquency based on conduct which is designated a crime . . . under the laws . . . of this state, the court, before hearing the petition on the merits, may transfer the child to the sheriff of the county to be held according to law and to be dealt with as an adult in the criminal court of competent jurisdiction. The disposition of the child shall be as if the child were an adult if:

(1) The child was sixteen (16) years or more of age at the time of the alleged conduct, or the child was less than sixteen (16) years of age if such child was charged with the offense of first degree murder, second degree murder, rape, aggravated rape, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping or an attempt to commit any such offenses. . . . ;

(2) A hearing on whether the transfer should be made is held . . . ;

. . . ; and

(4) The court finds that there are reasonable grounds to believe that:

(A) The child committed the delinquent act as alleged;

(B) The child is not committable to an institution for the mentally retarded or mentally ill; and

(C) The interests of the community require that the child be put under legal restraint or discipline.

(b) In making the determination required by subsection (a), the court shall consider, among other matters:

(1) The extent and nature of the child's prior delinquency records;

(2) The nature of past treatment efforts and the nature of the child's response thereto;

(3) Whether the offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(4) Whether the offense was committed in an aggressive and premeditated manner;

(5) The possible rehabilitation of the child by use of procedures, services and facilities currently available to the court in this state; and

(6) Whether the child's conduct would be a criminal gang offense, as defined in § 40-35-121, if committed by an adult.

Tenn. Code Ann. § 37-1-134 (2000).

In support of her argument, the defendant cites Tenn. Code Ann. § 37-1-134(a)(4)(C) and (b), which instructs juvenile courts to consider the “interests of the community” and “other matters” when determining whether to transfer a juvenile to criminal court. She claims that these terms are subjective and, therefore, result in juvenile courts arbitrarily transferring some juveniles to adult criminal court, while other similarly situated juveniles, who commit the same crimes, remain in juvenile court. She also claims that because “community” is undefined, it is open to multiple interpretations by the juvenile courts of this state. Finally, she claims that there is no rational basis for some juveniles, who commit murder, to remain in the juvenile court system and receive rehabilitative services, while other juveniles, who also commit murder in other communities, are transferred to adult court where they do not receive rehabilitative services.

The Fourteenth Amendment to the United States Constitution prohibits a state from denying the equal protection of the law to anyone within its jurisdiction. Equal protection, as guaranteed under article I, section 8 and article XI, section 8 of the Tennessee Constitution, is essentially the same as that afforded by the federal constitution. State v. Tester, 879 S.W.2d 823, 827 (Tenn. 1994); Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 152 (Tenn. 1993). “Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made.” Baxstrom v. Herold, 383 U.S. 107, 113, 86 S. Ct. 760, 763 (1966). A “defendant who alleges an equal protection violation has a burden of proving the existence of purposeful discrimination. A corollary to this principle is that a criminal defendant must prove that the purposeful discrimination had a discriminatory effect on him.” State v. Irick, 762 S.W.2d 121, 129 (Tenn. 1988). In the absence of a suspect classification, such as race, or of an intrusion upon a fundamental constitutional right, the challenged classification must “bear some rational relationship to legitimate state purposes.” San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 40, 93 S. Ct. 1278, 1300 (1973). However, if the classification “disadvantages a ‘suspect class’ or impinges upon the exercise of a ‘fundamental right,’ the legislative classification is subject to strict scrutiny by the courts” and must satisfy a compelling state interest. Doe v. Norris, 751 S.W.2d 834, 841 (Tenn. 1988).

Initially, we note that the defendant has not explained how the juvenile transfer statute had a discriminatory effect on her. In any event, we recognize that the juvenile transfer statute can result in some juveniles being tried as adults in criminal courts, while other juveniles, who commit similar offenses, remain in juvenile courts. However, the juvenile transfer statute does not violate equal protection because the statute applies equally to all juveniles in the state. Moreover, the statute lists the many factors that juvenile courts must consider and, despite the defendant’s claim, does not permit juvenile courts to act subjectively without restraint. Instead, we believe that the matter of whether a juvenile’s case will be transferred from juvenile to criminal court is left to judicial discretion, which is not “arbitrary, vague, or fanciful.” Scott v. Marley, 124 Tenn. 388, 394, 137 S.W. 492, 493 (1911).

We also disagree with the defendant’s claim that because “community,” Tenn. Code Ann. § 37-1-134(a)(4)(C), is undefined, it is open to multiple interpretations by the juvenile courts of this state and results in disparate treatment of juveniles who commit similar crimes. Former versions of

the juvenile transfer statute also used the word “community.” In State v. Strickland, 532 S.W.2d 912, 921 (Tenn. 1975), our supreme court held that the language of the juvenile transfer statute “is constitutionally adequate in that it establishes criteria upon which the juvenile judge is to base his decision on whether to transfer the juvenile to the criminal court and it adequately informs the parties as to what is to be considered by the judge.” Thus, although the statute has not defined “community,” that fact does not cause it to violate equal protection. Moreover, we believe that no matter how a juvenile court defines “community,” if reasonable grounds exist to believe that a sixteen-year-old child has intentionally and with premeditation stabbed and slashed a sleeping parent to death, then reasonable grounds will exist to believe that the interests of the community require putting that child under legal restraint.

Even if we were to agree that the juvenile transfer statute on its face treats similarly situated juveniles differently, the defendant’s equal protection claim would fail. No suspect classification or fundamental right is involved in this case. Therefore, the statute will be upheld as long as it passes the rational basis test. We conclude that the legislature has a legitimate interest in protecting the public from juveniles who commit violent crimes and who will not receive adequate rehabilitative services in the juvenile court system. Furthermore, we believe that the procedure outlined in the juvenile transfer statute provides juvenile courts with the guidance necessary to accomplish that purpose. The defendant is not entitled to relief.

B. Separation of Powers

Next, the defendant contends that the juvenile transfer statute violates the separation of powers doctrine because it grants the judiciary the authority to decide whether a juvenile’s conduct is a crime or a delinquent act, which is exclusively a legislative function. The state argues that because the statute merely grants the juvenile court the authority to determine whether reasonable grounds exist to believe that the child committed the crime, the statute does not violate the separation of powers doctrine. We agree with the state.

The Tennessee Constitution divides government powers among the Legislative, Executive, and Judicial Departments. Tenn. Const. art. II, § 1.

In general, the “legislative power” is the authority to make, order, and repeal law; the “executive power” is the authority to administer and enforce law; and the “judicial power” is the authority to interpret and apply law. The Tennessee constitutional provision prohibits an encroachment by any of the departments upon the powers, functions and prerogatives of the others. The branches of government, however, are guided by the doctrine of checks and balances; the doctrine of separation of powers is not absolute.

State v. Brackett, 869 S.W.2d 936, 939 (Tenn. Crim. App. 1993) (citations omitted). In this respect, the “power to define what shall constitute a criminal offense is committed to the discretion of the

legislature, subject to constitutional limitation and safeguards” State v. Hale, 840 S.W.2d 307, 314 (Tenn. 1992) (quoting Hall v. State, 151 Tenn. 416, 418, 270 S.W. 84, 85 (1925)).

We do not believe that Tenn. Code Ann. § 37-1-134 gives juvenile courts the power to define crimes. Instead, it merely details the procedure that a juvenile court must use when determining whether to transfer a juvenile to criminal court. In carrying out that procedure, the statute directs the juvenile court to look at the facts of a juvenile’s case and determine whether those facts provide reasonable grounds to believe that the juvenile has committed a crime. The crime itself has been defined by the legislature, and the juvenile transfer statute in no way infringes on that legislative function. The statute does not violate the separation of powers doctrine, and the defendant is not entitled to relief.

II. DOUBLE JEOPARDY

The defendant contends that her conviction violates her rights against double jeopardy. She claims that during the juvenile court hearing regarding transfer of her case to criminal court, the juvenile court adjudicated her guilty of killing the victim. Citing State v. Davis, 637 S.W.2d 471 (Tenn. Crim. App. 1982), she claims that the juvenile court’s “blending” of the transfer hearing with an adjudicatory hearing caused double jeopardy protections to attach at the transfer hearing and, therefore, her criminal court conviction violated those protections. The state argues that jeopardy did not attach. We agree with the state.

The double jeopardy clauses of both the United States and Tennessee constitutions state that no person shall be twice put in jeopardy of life or limb for the same offense. U.S. Const. amend. V; Tenn. Const. art. I, § 10. The clause has been interpreted to include the following protections: “It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense.” North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 2076 (1969); State v. Denton, 938 S.W.2d 373, 378 (Tenn. 1996). It is the second protection that is of interest in this case.

In Davis, two juvenile defendants were caught burglarizing a mobile home. Subsequently, the juvenile court entered two judgments against each defendant. Although the first set of judgments provided that there were reasonable grounds to believe that the juveniles committed burglary and properly transferred them to criminal court, the second set of judgments adjudicated the juveniles “delinquent.” This court reversed the criminal convictions, concluding that “the juvenile judge blended a transfer hearing with a hearing on the merits of the petition and double jeopardy resulted when the appellants were again tried in Criminal Court.” Davis, 637 S.W.2d at 474.

During the defendant’s transfer hearing in the present case, the juvenile court stated that pursuant to Tenn. Code Ann. § 37-1-134, it was required to consider three elements before it could transfer the defendant to criminal court: whether reasonable grounds existed to believe that (1) the defendant committed a delinquent act; (2) the defendant was committable to an institution for the

mentally ill or mentally retarded; and (3) the interests of the community required that the defendant be put under legal restraint. See Tenn. Code Ann. § 37-1-134(a)(4)(A)-(C). Based on testimony at the hearing, the juvenile court determined that reasonable grounds existed to believe that the defendant killed the victim, that the defendant was not committable, and that the interests of the community required her legal restraint. In addition, the juvenile court found that factors such as the crime being against a person instead of property and the inadequacy of rehabilitative services for the defendant in the juvenile system weighed in favor of transferring her to criminal court. See Tenn. Code Ann. § 37-1-134(b).

In support of her argument, the defendant notes that during the juvenile court hearing, the juvenile court stated, “Those photographs speak for themselves. They are -- they just are appalling. Miss Taylor slaughtered her mother just like you would slaughter an animal going to smokehouse, literally.” She claims that the juvenile court adjudicated her guilty with this statement. However, when viewed in context to the rest of the juvenile court’s findings, we disagree. Unlike Davis, there was only one judgment in the defendant’s case, and the juvenile court never adjudicated her a “delinquent child.” Instead, the hearing transcript shows that the juvenile court merely found that reasonable grounds existed to believe that the defendant killed the victim.

Moreover, the juvenile court referred to the juvenile transfer statute and properly followed the procedure outlined in the statute. It also concluded the hearing by stating that the defendant was to “be transferred to Criminal Court to be tried in this County, to be tried as adult.” Accordingly, we conclude that the defendant’s conviction in criminal court did not violate double jeopardy.

III. SLEEP DEFENSE INSTRUCTION

The defendant contends that the trial court erred by refusing to give a sleep defense instruction. She contends that because her primary defense was that she was asleep and dreaming when she killed her mother, the sleep defense instruction concerned a fundamental matter and the trial court’s failure to give the requested instruction constitutes reversible error. She contends that she was prejudiced by the trial court’s failure to give the instruction because the “jury could have interpreted this failure to mention the very heart of the defendant’s theory . . . as the court’s having a negative view of the theory.” The state contends that the defendant’s requested sleep defense instruction was an inaccurate statement of the law, and, therefore, the trial court properly denied the defendant’s request. We believe that if the trial court erred, such error was harmless.

A defendant has a right to have each issue of fact raised by the evidence and material to his defense submitted to the jury upon proper instructions by the trial court. State v. Brown, 836 S.W.2d 530, 553 (Tenn. 1992). A trial court should give a requested instruction if (1) it is supported by the evidence, (2) it embodies the party’s theory of the case, (3) it is a correct statement of the law, and (4) its substance has not already been included in other portions of the charge. See Mitchell v. Smith, 779 S.W.2d 384, 390-91 (Tenn. Ct. App. 1989). Tennessee law permits the introduction of evidence regarding the defendant’s mental condition for the purposes of negating the requisite

mental state for the offense charged. State v. Phipps, 883 S.W.2d 138, 149 (Tenn. Crim. App. 1994).

The defendant requested that the trial court instruct the jury as follows:

You have heard the testimony of a psychiatrist, Doctor Kenner, who testified as an expert for the defendant, that a person who is asleep cannot form the intent to kill someone. You've also heard testimony that Tiffany Taylor was asleep and killed Theresa Parramoure while Tiffany Taylor was asleep and dreaming. If you believe this part of the testimony of Doctor Kenner and if you believe that Tiffany Taylor killed Theresa Parramoure while Tiffany Taylor was sleeping, then you cannot find the defendant guilty of first degree murder, second degree murder, or voluntary manslaughter.

The trial court, concerned about commenting on the evidence, decided that giving the requested instruction would be improper but told the defense that it would instruct the jury as to the defendant's contention that she was not capable of forming the requisite mental state and that the burden of proof was on the state to show otherwise. The defense then requested that the trial court insert the word "sleep" somewhere in the instruction. However, the trial court, again afraid of commenting on the evidence, refused. During the jury charge, it stated:

The defendant contends that she was not capable of forming the required culpable mental state at the time of the act alleged. The burden is on the State to prove beyond a reasonable doubt that the defendant had formed the necessary culpable mental state for the offense. If you have a reasonable doubt as to whether the State has proven the required culpable mental state for the offense charged or any of the lesser included offenses, then you must find her not guilty.

We believe the language "you have heard" and "if you believe" in the defendant's requested instruction should have eliminated the trial court's fear of commenting on the evidence. Furthermore, we believe that the defendant's requested instruction was supported by the evidence and embodied the defendant's contention that she did not intend to kill the victim. However, we believe that, as the state argues, the requested instruction was not a correct statement of the law because it implied that the jury had to believe Dr. Kenner's and the defendant's testimony in order to find the defendant not guilty. To the contrary, the jury could have found the defendant not guilty by merely concluding that Dr. Kenner's and the defendant's testimony created a reasonable doubt as to her guilt. Thus, the trial court was not required to give the requested instruction to the jury.

Nevertheless, the trial court could have accommodated the defendant's request that "sleep" appear in the instruction. For example, the trial court could have stated, "The defendant contends that she was not capable of forming the required culpable mental state at the time of the act alleged

because she was asleep.” In any event, we do not believe that the defendant is entitled to relief. The instruction requested by the defendant was covered sufficiently by the instruction given by the trial court. Furthermore, the defense argued the sleep defense to the jury during closing arguments. We cannot conclude that failing to include the word “sleep” in the instruction more probably than not affected the verdict. See T.R.A.P. 36(b).

IV. ADMISSION OF PHOTOGRAPHS

Finally, the defendant contends that the trial court improperly admitted two inflammatory photographs into evidence, one showing the victim’s bloody bed and the other showing the victim’s neck and back wounds. She contends that in light of her offer to stipulate to the findings in the victim’s autopsy report, the evidentiary value of the photographs was outweighed by their prejudicial effect. The state contends that the trial court did not abuse its discretion in admitting the photographs. We conclude that the trial court did not err.

Initially, we note that although the defendant contends that she objected to the admission of both photographs at trial, the record reflects that when the state moved to introduce a group of photographs, including the photograph of the victim’s bloody bed, into evidence, the following exchange took place:

THE COURT: Okay. I guess for the record then, you had made an objection in regards to some of the photographs?

[Defense Counsel]: Yes, sir.

THE COURT: But those objections are not applicable to any of these photographs--is that what you’re saying--or some in this group that you would object to? I want to make sure we have that on the record.

[Defense Counsel]: I don’t believe that any of the ones to which I will enter an objection and have earlier are in this group.

THE COURT: Okay. So then I take it then that basically these photographs then there is no objection but there might be an objection to other photographs that they offer?

[Defense Counsel]: That’s what I’m reserving, yes.

THE COURT: So then these matters would be introduced and received into evidence and may be passed to the jury.

Thus, the defendant did not object to the state’s introduction of the photograph of the victim’s bed into evidence at trial and has waived this issue with regard to that photograph. See T.R.A.P. 36(a).

We also note that the defendant failed to raise the issue of admissibility as to either photograph in the motion for new trial. See T.R.A.P. 3(e) (defendant's failure to include the issue in the motion for a new trial bars our review). Moreover, we see no plain error that would justify our acting under Rule 52(b), Tenn. R. Crim. P.

The leading case regarding the admissibility of photographs of murder victims is State v. Banks, 564 S.W.2d 947 (Tenn. 1978), in which the supreme court indicated that the admissibility of photographs of murder victims is within the discretion of the trial court after considering the relevance, probative value, and potential unfair prejudicial effect of such evidence. Generally, "photographs of the corpse are admissible in murder prosecutions if they are relevant to the issues on trial, notwithstanding their gruesome and horrifying character." Id. at 950-51.

The first photograph in question shows the victim's bed. The state introduced the photograph during the testimony of Detective Andrews to show what he observed upon entering the victim's bedroom on November 27. In the photograph, the bed sheets are bloody and a filet knife is laying on the bed and near the victim. The only part of the victim's body that can be seen is her left arm, which is outstretched and has several defensive wounds. Although the photograph shows a large amount of blood, it is not a closeup of the victim, and it is not gruesome. Moreover, as the state points out in its brief, it is the only photograph that shows the murder weapon and its proximity to the victim.

The second photograph is an autopsy picture that was introduced during the testimony of Dr. Harlan. The photograph is a close-up shot and shows the victim from the waist up and lying face down. There is a large cut to the victim's neck and multiple knife wounds to her back. Some of the wounds to her back are stab wounds, while others are superficial cuts.

We believe that admission of the two photographs into evidence did not affect the substantial rights of the defendant under plain error analysis. Both of the photographs depict the victim's defensive wounds and the serious nature of her injuries. In addition, the first photograph shows bloodstains on the bedspread that are beyond the area immediately surrounding the victim's body. Considering that the defendant claimed that she committed the murder in her sleep, we believe that the photographs were material to the state's theory that the victim and the defendant struggled during the attack. In addition, we cannot conclude that the probative value of the photographs was substantially outweighed by their prejudicial effect. The defendant is not entitled to relief.

Based upon the foregoing and the record as a whole, we affirm the judgment of the trial court.

JOSEPH M. TIPTON, JUDGE